

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 02-3932

United States of America,

Appellee,

v.

Troy Burkey,

Appellant.

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Appeal from the United States
District Court for the
District of Nebraska.

[UNPUBLISHED]

Submitted: May 13, 2003

Filed: May 22, 2003

Before WOLLMAN and BEAM, Circuit Judges, and NANGLE,¹ District Judge.

PER CURIAM.

Troy Burkey appeals from the district court's² decision to overrule his objection to the United States' offer of summary exhibits. On July 17, 2002, Burkey was found guilty of conspiracy to commit bank fraud, 18 U.S.C. § 371, bank fraud, 18 U.S.C. § 1344, and false statements to a bank, 18 U.S.C. § 1014. On November 1, 2002,

¹The Honorable John F. Nangle, United States District Judge for the Eastern District of Missouri, sitting by designation.

²The Honorable Warren K. Urbom, United States District Judge for the District of Nebraska.

Burkey was sentenced to 21 months of imprisonment, five years of supervised release, and approximately \$370,000 in restitution. We affirm.

The use of summary exhibits at trial "rests within the sound discretion of the trial judge, whose action in allowing their use may not be disturbed by an appellate court except for an abuse of discretion." United States v. King, 616 F.2d 1034, 1041 (8th Cir. 1980). Summary evidence like the charts at issue in this case are properly admitted under Federal Rule of Evidence 1006 when (1) the charts fairly summarize trial evidence; (2) they assist the jury in understanding testimony already introduced; and (3) the "witness who prepared the charts is subject to cross-examination with all documents used to prepare the summary." Id. Charts may be sent to the jury room when accompanied by a limiting instruction. United States v. Possick, 849 F.2d 332, 339 (8th Cir. 1988). All of these requirements are satisfied in the case at bar.

We hold that the district court acted within its discretion by admitting the summary charts in evidence and by allowing them to go to the jury room after a limiting instruction.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.